IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.3920 OF 2006

Albright & Wilson Chemicals (P) Ltd. & ors. .. .. Petitioners
v/s.
Union of India & 2 ors. .. Respondents

Mr.D.B.Shroff holding for Mr.P.J.Ranga for petitioners.

Mr.A.S.Rao with Mr.Y.R.Mishra with Mr.Prajapati for respondents.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 16th August 2006

ORAL ORDER : (Per H.L.Gokhale, J.)

1. Heard the learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith.

3. The petitioners are making a grievance with respect to the order dated 18th November 2005 passed by the Additional Commissioner, Central Excise imposing a duty liability of Rs.13,54,463/- on the petitioners which order in Appeal has led to an order dated 16th May 2006 passed by the Commissioner of Central Excise (Appeals) requiring the petitioners to deposit 50% of the duty demanded. Both these orders are challenged in the present Petition.

4. The submission of the petitioners is that when the matter was heard by the Additional Commissioner with respect to the Show Cause Notice dated 6th December 2004, the petitioners were given to understand that the authority to hear and decide this Notice lies with the Joint Commissioner, Central Excise. This is on the footing that the jurisdiction of the Joint Commissioner is to hear and decide where the amount of duty involved is between Rs.5 Lakhs and Rs.20 Lakhs. In view thereof, although the Additional Commissioner did afford the hearing to anoither Show Cause Notice but the hearing was not afforded to the Show Cause Notice dated 6th December 2004.

5. The petitioners were, therefore, surprised to receive the order in original dated 18th November 2005 which was despatched from the office of the Additional Commissioner on 7th December 2005 and was received by the petitioners on 12th December 2005. The petitioners wrote to the Additional Commissioner immediately on 15th December 2005 recording in paragraph 3 thereof as to what transpired at the time of hearing and what was given to understand to them, namely, that the

matter being within the jurisdiction of the Joint Commissioner, the Notice had come to be issued erroneously by the office of the Additional Commissioner.

6. The petitioners carried this order in Appeal to the Commissioner (Appeals) and before the Commissioner also this submission was made but the Commissioner had passed the order directing the petitioners to deposit 50% of the duty demanded before the matter is heard further.

7. Mr.Rao appearing for the respondents submits that the matter is within the jurisdiction of the Joint Commissioner and that the Additional Commissioner, who is the higher Authority, can hear and decide the Show Cause Notice dated 6th December 2004. There is no dispute about the propositions made by Mr.Rao. The submission of the petitioners is that they were given to understand that the Notice is expected to be heard by the Joint Commissioner and the hearing was not given on the Show Cause Notice dated 6th December 2004. They wrote to the Additional Commissioner immediately on receiving that Notice.

8. Inasmuch as the question involved is only

limited to this aspect, namely, that the petitioners had not been heard when the order in original was passed, we interfere with both these orders viz. order in original dated 18th November 2005 as well as the order dated 16th May 2006 passed by the Commissioner of Central Excise (Appeals) and restore the original proceedings pertaining to the Show Cause Notice dated 6th December 2004. Now, we make it clear that it will be open either to the Joint Commissioner or the Additional Commissioner to hear and decide the Show Cause Notice dated 6th December 2004.

9. Mr.Shroff, learned Counsel appearing for the petitioners, makes a statement and we are recording that the petitioners will not make any grievance on this count as and when the Notice is received by either of the officers. The concerned officers will hear the petitioners and decide the Show Cause Notice on its own merits. We are not expressing our opinion on it.

10. Rule is made absolute as above. Petition stands disposed of. No order as to costs.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)